BEFORE THE

PUBLIC SERVICE COMMISISON OF SOUTH CAROLINA

DOCKET NO. 2017-332-E

In Re:)
)
Southern Current LLC; Cypress Creek	
Renewables, LLC; and Birdseye Renewable) Duke Energy Carolinas, LLC's and
Energy, LLC, Complainants/Petitioners) Duke Energy Progress, LLC's
) Objection to Interstate Renewable
) Energy Council, Inc.'s Petition to
v.) Intervene
)
Duke Energy Carolinas, LLC and Duke)
Energy Progress, LLC,)
Defendants/Respondents.)
)

Pursuant to 10 S.C. Code Ann. Regs. 103-825 and other applicable rules of practice and procedure of the Public Service Commission of South Carolina ("Commission"), Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") (collectively, "Duke Energy" or the "Companies") hereby object to the Interstate Renewable Energy Council, Inc.'s ("IREC") December 22, 2017, Petition requesting intervention in the above-captioned proceeding (the "Petition"). IREC fails to show that it has standing to intervene or to otherwise identify any personal stake or interest in this complaint proceeding. Therefore, the Commission should deny the Petition.

BACKGROUND

On October 27, 2017, Southern Current LLC; Cypress Creek Renewables, LLC; and Birdseye Renewable Energy, LLC (collectively, "Complainants") filed a complaint against DEC and DEP alleging that certain recently-adopted technical criteria and policies implemented by Duke Energy to evaluate the interconnection of large power export generators to the DEC and

DEP general distribution system ("Method of Service Guidelines") are improper (the "Complaint"). On December 11, 2017, Complainants requested leave from the Commission to amend their Complaint, which was granted by the assigned Hearing Officer on December 14, 2017. Complainants' amended complaint is now due on or before January 16, 2018.

On December 22, 2017, IREC filed the Petition requesting intervention in this Complaint proceeding. According to the Petition, IREC is national advocacy organization whose purpose is to "promote the creation of robust, competitive clean energy markets" and to "facilitate nationwide deployment of distributed energy resources." Petition, at 1-2. IREC identifies that it was involved in the 2015 stakeholder process to update the South Carolina Generator Interconnection Procedures ("SC GIP") and asserts its "interest in achieving South Carolina's distributed energy resource goals and nationwide expertise makes it a valuable participant in this proceeding." Petition, at 2. As explained below, IREC's asserted interests in this Complaint proceeding are not sufficient to establish standing.

<u>ARGUMENT</u>

IREC fails to meet the threshold requirements to be granted intervention in this Complaint proceeding, as IREC lacks the requisite standing. See Ex Parte Gov't Employee's Ins. Co., 373 S.C. 132, 138, 644 S.E.2d 699, 802 (2007) ("a party must have standing to intervene in an action pursuant to Rule 24, SCRCP"). A party seeking to establish standing must prove the "irreducible constitutional minimum of standing," which consists of three elements: (1) the petitioner must have suffered an injury in fact; (2) the injury and the conduct complained of must be causally connected; and (3) it must be likely, rather than merely speculative, that the injury will be redressed by a favorable decision. Sea Pines Ass 'n for the Prot. of Wildlife v. South Carolina Dep 't of Natural Res. & Cmty. Servs. Assocs., Inc., 345 S.C. 594, 601, 550 S.E.2d

287, 291 (2001). An "injury in fact" has been defined as "an invasion of a legally protected interest" which is "concrete and particularized" and "actual or imminent," not "conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). In order for the injury to be particularized, it must affect the petitioner in a personal and individual way. *Sea Pines*, 345 S.C. at 601, 550 S.E.2d at 291. A party petitioning to intervene has the burden to show a "particularized harm." *Id*.

IREC lacks standing because it has not suffered an injury as a result of Duke Energy's implementation of the Method of Service Guidelines. As a non-profit advocacy organization, IREC may be generally interested in the Companies' implementation of the South Carolina interconnection procedures; however, such a generalized interest is not sufficient to constitute an injury that is "concrete and particularized" and "actual or imminent." Moreover, IREC's stated interest in "assist[ing] the Commission" in resolving the dispute between the Companies and the Complainants does not create an injury in fact, and thus creates no basis for establishing standing. In similar circumstances, the Commission has previously denied intervention, holding that "while [an intervenor] may have some interest in the [proceeding] and may even have information which the Commission might find useful, it has not articulated a legally recognized basis for standing." Commission Order No. 2013-911 issued Dec. 18, 2013 in Docket No. 2013-392-E.

At best, IREC's Petition asserts a "substantial interest" in "the Companies' decisions regarding how they implement South Carolina's interconnection procedures, and the technical bases for doing so." Petition at 2. However, such general interests and assertions of technical expertise are not sufficient to constitute standing. "A real party in interest is one who has a real, actual, material, or substantial interest in the subject matter of the action, as distinguished from

one who has only a nominal, formal, or technical interest in, or connection with, the action." *Ex Parte Gov't Employee's Ins. Co.*, 373 S.C. at 138, 644 S.E.2d at 702.

The Petition does not identify that IREC has any specific relationship to Complainants or describe a specific interest in the Companies' utility operations in South Carolina—either on behalf of a retail customer served by the Companies or as an Interconnection Customer under the SC GIP. Instead, the Petition presents IREC's "nationwide" interests in expanding "competitive clean energy markets" and experience advocating for solar energy policies in other States, but does not identify how DEP's and DEC's implementation of the SC GIP or, specifically, application of the Method of Service Guidelines, will impact IREC in any way. Because IREC is not an interconnection customer of Duke Energy, or a customer at all of the Companies, IREC has not articulated a personal stake in the outcome of the dispute between Complainants and Duke Energy. For a party to have standing, it must have a "personal stake" in the outcome of the decision and assert interests in the subject matter of the suit that are not "too contingent, hypothetical, or improbable to support standing." See Duke Power Co. v. S.C. Public Service Com'n, 284 S.C. 81, 98, 326 S.E.2d 395, 405 (1985).

IREC also does not possess associational standing. "The three-part test for associational standing requires that an association's members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 76, 753 S.E.2d 846, 851 (2014). IREC has not identified any actual members of its organization who may be

impacted by the outcome of this Complaint proceeding, and therefore cannot establish standing on behalf of its members.¹

Additionally, the fact that IREC participated in the 2015 generic stakeholder process in Docket No. 2015-362-E to revise the SC GIP as required by Act 236 has no bearing on whether IREC now has standing to intervene in this Complaint proceeding. Prior involvement in a general rulemaking proceeding, like Docket No. 2015-362-E, is quite different from establishing a specific interest in the outcome of a complaint proceeding where the Commission is serving in its judicial capacity to adjudicate a specific adversarial dispute. Secondly, such prior connection to a previously concluded general rulemaking matter—notably where IREC's participation and intervention was unopposed—does not in any way create the requisite standing to support granting intervention in the current Complaint action. A real party in interest possessing standing is "distinguished from one who only has...a connection with the action." *Ex Parte Gov't Employee's Ins. Co.*, 373 S.C. at 138, 644 S.E.2d at 702.

In sum, because IREC has failed to establish that it has suffered any injury sufficient to constitute standing in this Complaint proceeding, it fails to meet the threshold standing requirement in order to intervene, and its Petition should be denied.

¹ The Commission's most recent orders granting approval of petitions to intervene by non-profits Southern Alliance for Clean Energy ("SACE") and Carolina Coastal Conservation League ("CCL") have all been based upon petitions specifically identifying SACE and CCL's (1) actual members located in South Carolina, and (2) actual member-customers of the Companies whose rates and/or service may be affected by the outcome of the proceeding where intervention is sought. See, e.g. SACE and CCL Petitions to Intervene in Docket Nos. 2017-245-E; 2017-35-E; 2017-10-E; 2017-8-E; 2017-3-E; and 2015-362-E.

CONCLUSION

WHEREFORE, for the reasons set forth herein, Duke Energy requests that the Petition be denied.

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Attorneys for Duke Energy Carolinas, LLC Duke Energy Progress, LLC

Columbia, South Carolina January 2, 2018

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA DOCKET NO. 2017-332-E

Southern Current LLC; Cypress Creek Renewables, LLC; and Birdseye Renewable Energy, LLC,) e) CERTIFICATE OF SERVICE
Petitioners,)
N/)
V.)
Duke Energy Carolinas, LLC and Duke)
Energy Progress, LLC,)
)
Respondents.)
)

This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Sowell Gray Robinson Stepp & Laffitte, LLC, have this day caused to be served upon the person(s) named below the **Objection to Interstate Renewable Energy Council, Inc.'s Petition to Intervene on behalf of Duke Energy Carolinas, LLC and Duke Energy Progress,** in the foregoing matter via electronic mail addressed as indicated below:

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Doni C. Hawkins